Intermec Technologies Corp. v. Palm, Inc.

Doc. 123 Att. 1

EXHIBIT 2

Dockets.Justia.com

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
William M. Audet (CA State Bar #117456
AUDET & PARTNERS, LLP
221 Main Street, Suite 1460
San Francisco, CA 94105
TELEPHONE NO.: (415) 568-2555 FAX NO.: (415) 568-2556
ATTORNEY FOR (Name): James Norem

FOR COURT USE ONLY

(ENDORSED) FILED

JAN 28 09

David H. Yamasaki, Clerk of the Superior Court County of Santa Clara, California
By: J. Cao-Nguyen Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara
STREET ADDRESS: 191 N. First Street
MAILING ADDRESS:
CITY AND ZIP CODE: San Jose, CA 95113
BRANCH NAME: Superior Court- Downtown

CASE NAME:
James Norem v. Netflix, Inc. and Walmart.com USA, LLC,

CIVIL CASE COVER SHEET	Complex Case Designation	CASE NUMBER: 109CV135776
[✓] Unlimited (Amount demanded exceeds $25,000) [ ] Limited (Amount demanded is $25,000 or less)	[ ] Counter [ ] Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	JUDGE: DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort
- [ ] Auto (22)
- [ ] Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- [ ] Asbestos (04)
- [ ] Product liability (24)
- [ ] Medical malpractice (45)
- [ ] Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- [✓] Business tort/unfair business practice (07)
- [ ] Civil rights (08)
- [ ] Defamation (13)
- [ ] Fraud (16)
- [ ] Intellectual property (19)
- [ ] Professional negligence (25)
- [ ] Other non-PI/PD/WD tort (35)

Employment
- [ ] Wrongful termination (36)
- [ ] Other employment (15)

Contract
- [ ] Breach of contract/warranty (06)
- [ ] Rule 3.740 collections (09)
- [ ] Other collections (09)
- [ ] Insurance coverage (18)
- [ ] Other contract (37)

Real Property
- [ ] Eminent domain/Inverse condemnation (14)
- [ ] Wrongful eviction (33)
- [ ] Other real property (26)

Unlawful Detainer
- [ ] Commercial (31)
- [ ] Residential (32)
- [ ] Drugs (38)

Judicial Review
- [ ] Asset forfeiture (05)
- [ ] Petition re: arbitration award (11)
- [ ] Writ of mandate (02)
- [ ] Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
- [ ] Antitrust/Trade regulation (03)
- [ ] Construction defect (10)
- [ ] Mass tort (40)
- [ ] Securities litigation (28)
- [ ] Environmental/Toxic tort (30)
- [ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- [ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
- [ ] RICO (27)
- [ ] Other complaint (not specified above) (42)

Miscellaneous Civil Petition
- [ ] Partnership and corporate governance (21)
- [ ] Other petition (not specified above) (43)

BY FAX

2. This case [✓] is [ ] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   - a. [ ] Large number of separately represented parties
   - b. [✓] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   - c. [✓] Substantial amount of documentary evidence
   - d. [ ] Large number of witnesses
   - e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   - f. [ ] Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. [✓] monetary b. [✓] nonmonetary; declaratory or injunctive relief c. [ ] punitive
4. Number of causes of action (specify): Cal. Bus. Prof. 16720, 16727, 17200, and Unjust Enrichment
5. This case [✓] is [ ] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 1/28/2009
William M. Audet
(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev. July 1, 2007]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400–3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

American LegalNet, Inc.
www.FormsWorkflow.com

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ENDORSED
FILED
JAN 28 09
David H. Yamasaki, Clerk of the Superior Court
County of Santa Clara, California
By: ______________ Deputy Clerk
J. Cao-Nguyen

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
NETFLIX, INC. and WALMART.COM USA, LLC

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
James Norem, on behalf of himself and others similarly situated

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.
There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.
Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of Santa Clara
191 N. First Street
San Jose, CA 95113

CASE NUMBER: *(Número del Caso):* 109CV133576

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
William M. Audet, AUDET & PARTNERS, LLP, 221 Main Street, Suite 1460
San Francisco, CA 94105, Telephone: (415) 568-2555, Facsimile: (415) 568-2556

DATE: *(Fecha)* JAN 28 2009 DAVID H. YAMASAKI Chief Executive Officer/Clerk, by J. Cao-Nguyen, Deputy *(Secretario)* *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☐ on behalf of *(specify)*:
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify)*:
4. ☐ by personal delivery on *(date)*:

William M. Audet (CA State Bar #117456)
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Aaron H. Darsky (CA State Bar #212229)
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ENDORSED
FILED
JAN 28 09
David H. Yamasaki, Clerk of the Superior Court
County of Santa Clara, California
By: J. Cao-Nguyen

Attorneys for Plaintiffs and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

JAMES NOREM, on behalf of himself and others similarly situated,	Case No. 109CV133576
Plaintiff,	CLASS ACTION COMPLAINT
v.	JURY TRIAL DEMANDED
NETFLIX, INC. and WALMART.COM USA, LLC,	Complex Litigation Division
Defendants.	BY FAX

Plaintiff for this Complaint brought under California law against California Defendants for California residents for treble damages and injunctive and declaratory relief against Netflix, Inc. ("Netflix") and Walmart.com USA, LLC ("Walmart.com") (hereinafter collectively, "Defendants"):

UNDERLYING FACTS

1. On or about May 19, 2005, Netflix and Walmart.com (a wholly owned subsidiary of Wal-Mart Stores, Inc.) agreed to divide the markets for the sales and online rentals of DVDs in the United States ("Defendants' Unlawful Market Division Agreement"), with the specific purpose and intended effect of monopolizing and otherwise unreasonably restraining trade in the online DVD rental market.

2. Prior to entering into the Defendants' Unlawful Market Division Agreement, Netflix and Walmart.com were essentially the only direct competitors in the online DVD rental business, and both were also competitors in directly selling DVDs to consumers.

3. By May 2005, Netflix and Walmart.com (a wholly owned subsidiary of Wal-Mart Stores, Inc.) entered into an agreement by which Walmart.com would cease competing with Netflix in the online DVD rental business, and Netflix would promote the sales of new DVDs by Walmart.com online (and Wal-Mart Stores). In exchange, Netflix agreed to cease any sale of new DVDs.

4. Defendants' conspiracy enabled Netflix to increase its overpricing (and profits) by establishing higher subscription rates for DVD rentals. As a result of this contract, as well as Netflix's unlawfully and illegally obtained and maintained market and monopoly power, Netflix subsequently did in fact overcharge Plaintiff and Class members for subscription fees.

5. Under the Defendants' Unlawful Market Division Agreement, Netflix and Walmart.com agreed that they would restrain trade and eliminate competition. Walmart.com agreed that it would stop competing with Netflix in the online rental market. Netflix agreed that it would not sell new DVDs, but instead would promote the DVD sales of Walmart.com (and Wal-Mart Stores).

6. In promoting the sale of DVDs by Walmart.com (and Wal-Mart Stores), Netflix provided "consideration" for the agreement by Wal-Mart Stores and Walmart.com, so that Walmart.com would exit the online DVD rental market and simultaneously confirmed to Walmart.com (and Wal-Mart Stores) that Netflix would not enter the market to sell new DVDs, as Netflix was well-positioned and otherwise had the unilateral economic incentive to do.

7. Since entering into the Defendants' Unlawful Market Division Agreement, neither Wal-Mart Stores nor Walmart.com has rented DVDs online and Netflix has not sold new DVDs online to customers. The Defendants' Unlawful Market Division Agreement served to entrench and enhance Defendants' respective dominant positions in this market and otherwise cause harm to competition, including enabling Netflix to charge higher subscription rates for online DVD rentals than it would have had they not entered into the agreement.

8. Online DVD "rentals" are a distinct and separate market from DVD "sales." The price of a new DVD depends heavily on how popular it is, including whether it is a new release or how successful the title originally was at the box office or on television. By contrast, online DVD renters generally charge based on a monthly or yearly subscription fee.

9. Plaintiff and all other similarly situated consumers in fact paid higher subscription prices to Netflix.

10. This case is brought as a Class Action filed on behalf of all consumers in California who, during the period May 19, 2005 to the present, paid a subscription fee to rent DVDs from Netflix.

PLAINTIFF

11. James Norem is an individual consumer who resides in San Francisco, California. During the Class Period, Plaintiff Norem directly subscribed to Netflix for his personal, non-commercial use. Plaintiff Norem is a member of the proposed Class and has been injured by Defendants' conduct.

DEFENDANTS

12. Defendant Netflix is a corporation headquartered at 100 Winchester Circle, Los Gatos, California, 95032. Through its website, www.netflix.com, Netflix rents DVDs directly to consumers nationwide by charging monthly subscription fees, which allows customers to rent DVDs pursuant to various subscription plans. Netflix has possessed a market share of no less than 75% of the online DVD rental market in the United States at all times during the Class Period.

13. Defendant Walmart.com is a wholly-owned subsidiary of Wal-Mart Stores.

Walmart.com is a Delaware company with its headquarters and operations at 7000 Marina Boulevard, Brisbane, California, 94005. It is the online component of Wal-Mart Stores' retail empire that is the leading seller of new DVDs in the United States. Prior to the conspiracy alleged herein, Walmart.com was also a major competitor of Netflix in the online DVD rental market through the "Walmart DVD Rentals" service. Through the website, www.walmart.com, Defendant Walmart.com sells DVDs directly to consumers nationwide.

JURISDICTION AND VENUE

14. This Complaint is filed pursuant to California Business and Professions Code sections 16720, *et seq.*, commonly known as the Cartwright Act. Under California Business and Professions Code section 16750(a), Plaintiffs seek to recover treble the damages Plaintiffs and the members of the Class have sustained due to Defendants' illegal activities.

15. Venue is proper in Santa Clara County under California Business and Professions Code section 16750(a), and California Code of Civil Procedure section 395.5. Defendant Netflix's principal place of business is in Santa Clara County.

16. The amount in controversy for the individual Plaintiff and for each Class member is less than $75,000 per Class member.

17. No portion of this Complaint is brought pursuant to federal law.

18. All the members of the proposed Class are residents of the State of California.

CLASS ALLEGATIONS

19. Plaintiff brings this action on behalf of himself and the members of the Class, defined as comprising:

> All residents of California who paid a "subscription fee" to Netflix to rent DVDs online after May 19, 2005 up to the present.

20. The Class numbers in the thousands. The exact number and identities of the members are known by Defendants. Excluded from the Class are government entities, Defendants, their co-conspirators and their representatives, parents, subsidiaries, and affiliates.

21. The Class is so numerous and geographically dispersed that joinder of all members is impracticable.

22. There are questions of law and fact common to the Class and the members thereof. These common questions relate to the existence of the conspiracy alleged, and to the type and common pattern of injuries sustained as a result thereof. The questions include, but are not limited to:

(a) Whether Defendants engaged in a contract, combination, or conspiracy to allocate markets;

(b) Whether Defendants unreasonably restrained trade in the online DVD rental market;

(c) Whether Defendants had the specific intent for Netflix to monopolize the online DVD rental market;

(d) The nature and character of the acts performed by Defendants in furtherance of the alleged contract, combination, and conspiracy;

(e) Whether the alleged contract, combination, and conspiracy violated California law;

(f) The anticompetitive effects of Defendants' violations of the law;

(g) Whether Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole; and

(h) Whether the conduct of Defendants, as alleged in this Complaint, caused Netflix subscription fees to be higher than they otherwise would have been and thereby caused injury to the business and property of Plaintiff and other members of the Class.

23. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including the legal and factual issues relating to liability and damages.

24. Plaintiff is a member of the Class. Their claims are typical of the claims of other members of the Class, and they will fairly and adequately protect the interests of the members of the Class. Their interests are aligned with, and not antagonistic to, those of the other members of the Class.

25. Plaintiff is represented by Audet & Partners, LLP, a law firm experienced with class action antitrust litigation and familiar with the Rules of this Court.

26. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Class treatment will permit the adjudication of relatively small

claims by members of the Class who otherwise could not afford to litigate antitrust claims such as are asserted in this Complaint. This class action presents no difficulties of management that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION

[Violation of Cal. Bus. & Prof. Code Sections 16720 (Cartwright Act)]

(Against All Defendants)

27. Plaintiff incorporates, as though fully set forth herein, each and every paragraph set forth above.

28. Defendants' conduct as alleged in this Complaint violates Cal. Bus. & Prof. Code Section 16720, et seq. (commonly known as the "Cartwright Act").

29. As alleged in this Complaint, Plaintiff and the members of the Class have been injured in their business and property as a result of the Defendants' violation of Section 16720 of the California Business and Professions Code, for which they seek treble damages pursuant to Section 16750, subdivision (a) of that Act.

30. As a proximate result of the Defendants' conduct, Plaintiff and the Class he represents have been damaged in an amount to be proven at trial.

SECOND CAUSE OF ACTION

[Violations of Cal. Bus. & Prof. Code § 16727 (Cartwright Act)]

(Against All Defendants)

31. Plaintiff incorporates and realleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

32. Defendants' conduct as alleged in this Complaint further violates Cal. Bus. & Prof. Code Section 16727. The conduct includes, but is not limited to, contracts for the effect of which is to substantially lessen competition or tend to create a monopoly in the trade.

33. For the purpose of restraining trade and maintaining and profiting from its monopoly, Defendants have engaged in unlawful acts.

34. Defendants' behavior alleged herein has had, *inter alia,* the following effects:

(a) Price competition in the DVD rental market has been restrained, suppressed and/or eliminated; and

(b) Those who subscribe to DVD rentals have been deprived of the benefit of free and open competition.

35. Plaintiff and the other members of the Class paid supra-competitive, artificially inflated prices in the DVD online rental market and higher subscription fees.

THIRD CAUSE OF ACTION

[Violations of Cal. Bus. & Prof. Code § 17200. (Unfair Competition Act)]

(Against All Defendants)

36. Plaintiff incorporates and realleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

37. This Complaint is filed and these proceedings are instituted pursuant to sections 17203 and 17204 of the California Business and Professions Code, to obtain restitution, disgorgement, and other available remedies from Defendants for acts and business practices, as alleged herein, in violation of section 17200 of the California Business and Professions Code, commonly known as the Unfair Competition Act.

38. The conduct alleged herein violates California Business and Professions Code section 17200. The acts and business practices, as alleged herein, constituted and constitute a common, continuous, and continuing course of conduct of unfair competition by means of unfair, unlawful and/or fraudulent business acts or practices within the meaning of California Business and Professions Code section 17200, *et seq.*, including, but in no way limited to, the following:

(a) Defendants' acts and business practices as described above constitute violations of California Business and Professions Code section 16720, *et seq.*, as set forth above;

(b) Defendants' acts and business practices as described above constitute violations of California Business and Professions Code section 16727, *et seq.*, as set forth above; and

(c) Defendants' acts and business practices as described above, whether or not in violation of California Business and Professions Code sections 16720 or 16727, *et seq.*, are otherwise unfair, unconscionable, unlawful and/or fraudulent within the meaning of California Business and Professions Code section 17200.

39. Plaintiff and the other members of the Class are each entitled to full restitution or disgorgement of all revenues, earnings, profits, compensation, and benefits which may have been obtained by Defendants as a result of these business acts or practices.

40. The illegal conduct alleged herein is continuing and there is no indication that Defendants will not continue such activity into the future.

FOURTH CAUSE OF ACTION

[Unjust Enrichment]

(Against Defendant Netflix Only)

41. Plaintiff incorporates and realleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

42. Defendant Netflix has been unjustly enriched through overpayments of subscription fees by Plaintiff and Class members.

43. Defendant Netflix should not be allowed to retain the monetary benefits conferred via overpayments by Plaintiff and Class members of the subscription fees.

44. Plaintiff seeks disgorgement of all overpayments and establishment of a constructive trust from which Plaintiff and Class members may seek appropriate relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the members of the Class, prays for judgment against the Defendants, jointly and severally, as follows:

1. Determining that this action may proceed and be maintained as a class action and that Plaintiff be certified as Class representative;

2. That the unlawful trust, combination, agreement, and course of conduct alleged herein be adjudged and decreed to be a violation of section 16720 of the California Business and Professions Code, and that Plaintiff and the other members of the Class have been injured and damaged as a result of Defendants' violation of the Cartwright Act;

3. That Defendant's conduct tended to lessen competition, as alleged herein; that such conduct be adjudged and decreed to be a violation of section 16727 of the California Business and Professions Code, and that Plaintiff and the other members of the Class have been injured and damaged as a result of Defendant's violation of the Cartwright Act;

4. That Defendants be found to have engaged in unfair competition in violation of section 17200 of the California Business and Professions Code;

5. For declaratory relief and damages according to proof at trial, and that such amount be trebled;

6. For reasonable attorneys' fees pursuant to Section 16750(a) of the Business and Professions Code;

7. For prejudgment interest at the highest legal rate, from and after the date of service of the Complaint in this action;

8. Ordering Defendants, and each of them, their agents, servants, and employees, and all persons acting, directly or indirectly, in concert with them, to restore all funds to each member of the Class acquired by means of any act or practice declared by this Court to be unlawful or to constitute unfair competition under Sections 17200, et seq., of the Business and Professions Code;

9. For costs of suit;

10. That Plaintiff and the other members of the Class be granted such other and further relief as the nature of the case may require or as this Court deems just and proper.

Dated: January 28, 2009

AUDET & PARTNERS, LLP

By [signature]
William M. Audet
Aaron H. Darsky
Adel A. Nadji
221 Main Street, Suite 1460
San Francisco CA 94105
Telephone: 415.982.1776
Facsimile: 415.568.2556

ATTACHMENT CV-5012

CIVIL LAWSUIT NOTICE

CASE NUMBER: 109CV138576

Superior Court of California, County of Santa Clara
191 N. First Street, San Jose, CA 95113

READ THIS ENTIRE FORM

PLAINTIFFS (the person(s) suing): Within 60 days after filing the lawsuit, you must serve each defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANTS (The person(s) being sued): **You must do each of the following to protect your rights:**

1. You must file a **written response** to the *Complaint*, in the Clerk's Office of the Court, within **30 days** of the date the *Summons* and *Complaint* were served on you;
2. You must send a copy of your written response to the plaintiff; and
3. You must attend the first Case Management Conference.

Warning: If you do not do these three things, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court (CRC) and the Santa Clara County Superior Court Local Civil Rules and use proper forms. You can get legal information, view the rules and get forms, free of charge, from the Self-Service Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: http://www.sccsuperiorcourt.org/civil/rule1toc.htm

For other local legal information, visit the Court's Self-Service website www.scselfservice.org and select "Civil."

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. *You may ask to appear by telephone – see Local Civil Rule 8.*

Your Case Management Judge is: Joseph Huber **Department:** 8C

The 1st CMC is scheduled for: (Completed by Clerk of Court)
Date: 6/12/09 ***Time:*** 10:00 am **in Department** 8C

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)
Date: ______ ***Time:*** ______ **in Department** ______

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET / CIVIL DIVISION

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

< **ADR can save time.** A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.

< **ADR can save money.** Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.

< **ADR provides more participation.** Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.

< **ADR provides more control and flexibility.** Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.

< **ADR can reduce stress.** ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

< **Mediation** is an informal, confidential process in which a neutral party (the mediator) assists the parties in understanding their own interests, the interests of the other parties, and the practical and legal realities they all face. The mediator then helps the parties to explore options and arrive at a mutually acceptable resolution of the dispute. The mediator does not decide the dispute. The parties do.

< Mediation may be appropriate when:
    < The parties want a non-adversary procedure
    < The parties have a continuing business or personal relationship
    < Communication problems are interfering with a resolution
    < There is an emotional element involved
    < The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

< **Arbitration** is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties, then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

< The action is for personal injury, property damage, or breach of contract
< Only monetary damages are sought
< Witness testimony, under oath, needs to be evaluated
< An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

< **Civil Judge ADR** allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

< The parties have complex facts to review
< The case involves multiple parties and problems
< The courthouse surroundings would be helpful to the settlement process

< **Special masters and referees** are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

< **Settlement conferences** are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?

Contact:
Santa Clara County Superior Court
ADR Administrator
408-882-2530

Santa Clara County DRPA Coordinator
408-792-2704